

REMARKS

Claims 1-20 and 29-33 have been rejected by the Examiner. In response, claims 1, 3, 5-10, 14, 16-19, 29-31, and 33 have been amended and claims 4, 15, and 32 have been cancelled. Accordingly, claims 1-3, 5-14, 16-20, 29-31, and 33 remain pending.

CLAIM AMENDMENTS

Support for the claim amendments may be found in Figure 3B, on page 10, line 14 through page 11, line 3, and on page 2, lines 8-12 of Applicant's Specification.

CLAIM REJECTIONS - 35 U.S.C. §102

On page 2 of the above-identified Office Action, claims 1, 2, 4-8, 10, 11, 15-19, 29, 30, 32, and 33 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,298,247 to *Alperovich et al.* (hereinafter "Alperovich").

Claims 4, 15, and 32 have been cancelled. Thus, Applicants respectfully submit that their rejections have been obviated.

In rejecting claim 1, the Examiner points to col. 3, lines 39-42 of Alperovich, and quotes the following from that passage: "VC 402 may perform volume control function by performing selected filter grain on primary audio signal 406 based on secondary audio signal 408." This and other passages of Alperovich describe a mobile device equipped to automatically adjust volume based on subscriber volume preferences. The subscriber volume preferences are determined by the device by observing a level of background noise and, simultaneously, a volume level selected by a user. In further use, when that background noise level is again observed by the mobile device, the mobile device automatically increases or decreases the volume level based on the preference for that background noise level (see Figure 3, Step "Increase Volume Command"). In an embodiment illustrated by Figure 4 and described by the passage quoted by the Examiner, two audio signals are provided to the user, one of the signals being the user's own voice as detected by a microphone of the mobile device. In this embodiment, the volume level of the other audio signal is adjusted based on the volume level of the user's voice ("primary audio signal 406 based on secondary audio signal 408").

In response, Applicants have amended claim 1, overcoming the Examiner's rejection. Claim 1 now recites "while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial volume level, the increased second audio volume level being different from the first audio volume level." As recited, the second audio volume level of the second signal is different from the first audio volume level of the first signal after the increase.

In contrast, Alperovich teaches increasing/decreasing the primary audio signal volume to be identical to the secondary audio signal (user's voice) volume. Thus, while the volumes of the two signals may initially have been different, they are increased or decreased to be the same. After the volume increase/decrease, the two signal volumes in Alperovich are identical. Thus, Alperovich does not teach, in as complete of detail as is claimed, the incremental increasing recited by amended claim 1.

Further, Alperovich provides no suggestion of the incremental increasing recited by of claim 1. Alperovich bases the volume of the primary signal on the volume of the user's voice because it serves Alperovich's purpose of automatically providing a good volume level in light of background noise. Alperovich is solely concerned with distinguishing mobile device audio signals from background noise, not with distinguishing mobile device audio signals from each other. Claim 1, in contrast, is concerned in part with distinguishing audio signals of the mobile device from each other (See page 2, lines 8-12 of Applicant's Specification). Thus, one of ordinary skill simply would not find any reason in Alperovich to modify Alperovich to practice the incremental increase recited by claim 1.

Accordingly, amended claim 1 is patentable over Alperovich.

Amended claims 10 and 29 include recitations similar to those of amended claim 1. Accordingly, for at least the same reasons, amended claims 10 and 29 are patentable over Alperovich.

Claims 2, 5-8, 11, 16-19, 30, and 33 depend from amended claims 1, 10, and 29, respectively, incorporating their limitations. Thus, for at least the same reasons, claims 2, 5-8, 11, 16-19, 30, and 33 are patentable over Alperovich.

Also, claims 5 and 16 are patentable over Alperovich for additional reasons. Claims 5 and 16 recite “wherein said incrementally increasing comprises incrementally increasing the second audio volume level to a pre-determined audio volume level limit above which hearing damage is likely to occur.” While Alperovich may inherently teach some sort of maximum volume of the mobile device above which volume increase is mechanically impossible, nothing in Alperovich teaches or suggests limiting volume increases based on potential hearing damage. In fact, by increasing volume only to the volume level of the user’s voice or a previous volume level selected by the user, Alperovich teaches away from the need for any sort of pre-determined volume level limit.

CLAIM REJECTIONS - 35 U.S.C. §103

On page 10 of the above-identified Office Action, claims 3, 9, 12-14, 20, and 31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Alperovich in view of U.S. Patent No. 6,351,653 to *Alberth, Jr. et al.* (hereinafter “Alberth”).

Alberth does not cure the above discussed deficiencies of Alperovich. Accordingly, claims 1, 10, and 29 remain patentable even when Alperovich is combined with Alberth. Claims 3, 9, 12-14, 20, and 31 depend from claims 1, 10, and 29, respectively, incorporating their limitations. Thus, claims 3, 9, 12-14, 20, and 31 are patentable over Alperovich and Alberth under §103 for at least the same reasons that claims 1, 10, and 29 are.

CONCLUSION

In view of the foregoing, reconsideration and allowance of claims 1-3, 5-14, 16-20, 29-31, and 33 is solicited in light of the arguments and amendments herein. Accordingly, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1513. If

any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,

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/ Robert C. Peck/

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